

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

SHELBY WAYNE BEST

PLAINTIFF

v.

CAUSE NO. 1:16-cv-118-LG-RHW

DAVID CROCKER, et al.

DEFENDANTS

**ORDER ADOPTING REPORT AND RECOMMENDATION AND
DISMISSING ACTION**

This cause comes before the Court on the [43] Report and Recommendation of United States Magistrate Judge Robert H. Walker. Plaintiff Shelby Wayne Best brought this action against multiple defendants pursuant to 42 U.S.C. § 1983 alleging violations of his constitutional rights. On April 26, 2017, this cause came before Magistrate Judge Walker for a duly noticed omnibus hearing, but Best failed to appear at the hearing. Having reviewed the Magistrate Judge's Report and Recommendation and the record in this action, the Court agrees with Magistrate Judge Walker that this action should be dismissed based on Best's failure to appear at the hearing.

The record reflects that on February 8, 2017, Best was sent a copy of the notice of hearing at his last known address of record at the George County Correctional Facility located in Lucedale, Mississippi. The record further reflects that the writ which was issued to George County Correctional Facility to secure Best's presence at the hearing was received by the facility before February 13, 2017. (*See* ECF No. 42). According to Magistrate Judge Walker, "[t]he facility has since advised the Court that Best was released from confinement on parole on February 22, 2017."

(Rep. & Rec. 1, ECF No. 43). Both the Magistrate Judge and this Court have confirmed that “Best does not appear on an inmate search of the Mississippi Department of Corrections web site.” (*See id.*). Moreover, the Magistrate Judge advised Best in writing on multiple occasions of his responsibility to keep the Court apprised of any address changes. (*See, e.g.*, ECF Nos. 3, 6, 8, 13, 21). Nonetheless, Best did not appear for the April 26 hearing¹ and has not filed a change of address since his release, and has otherwise filed nothing in this action since January 2017.

As a result, on April 26, Magistrate Judge Walker recommended that this Court dismiss this action for Best’s failure to appear at the omnibus hearing. Best has not objected to or otherwise responded to Magistrate Judge Walker’s Report and Recommendation, and the time for doing so has now expired. Indeed, the Report and Recommendation was returned as undeliverable, because, again, Best has not informed this Court of his current address. (*See* ECF No. 44).

Where no party has objected to the Magistrate Judge’s Report and Recommendation, the Court need not conduct a de novo review of it. *See* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.”). In such cases, the Court need only review the Report and

¹ The Magistrate Judge stated that he “called Best’s name three times in open court with no response, and Deputy Ryan called his name three times with no response in the hallway outside the courtroom.” (Rep. & Rec. 2, ECF No. 43).

Recommendation and determine whether it is either clearly erroneous or contrary to law. *See, e.g., United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court is of the opinion that Magistrate Judge Walker's Report and Recommendation is neither clearly erroneous nor contrary to law. Accordingly, the Court finds that the [43] Report and Recommendation should be adopted as the opinion of this Court, and that this matter should be dismissed.

IT IS THEREFORE ORDERED AND ADJUDGED that the [43] Report and Recommendation of United States Magistrate Judge Robert H. Walker entered in this cause should be, and hereby is, adopted as the findings of this Court, and that Plaintiff's claims against Defendants are **DISMISSED**. A separate judgment will be entered.

SO ORDERED AND ADJUDGED this the 11th day of May, 2017.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE